VERMONT PUBLIC SERVICE BOARD

2006 JUN 21 A 10: 54

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7192

Petition of Vermont Department of Public Service for an Investigation Into Alleged Unlawful Customer Records Disclosure by Verizon New England, Inc.	))))

(1)

PETITION

NOW COMES the Department of Public Service (DPS), by and through its Director for Public Advocacy and the undersigned Special Counsel, and petitions the Public Service Board to open an investigation into the alleged unlawful customer records disclosure by Verizon New England, Inc. d/b/a Verizon Vermont. In support of its petition, the Department states as follows:

1. The DPS is responsible for supervising the execution of all laws relating to telephone and other utilities and is the statutory representative of the public before the Public Service Board. 30 V.S.A. § 2.
2. Verizon New England, Inc. is a company providing telecommunications service in Vermont and is subject to the jurisdiction of the DPS and the Board.
3. By letter dated May 17, 2006, and pursuant to the authority granted the DPS by 30 V.S.A. § 206, the DPS sought information from Verizon New England, Inc. d/b/a Verizon Vermont regarding the alleged disclosure of customer information to the National Security Agency and any other state or federal agency. A true copy of the request is attached as Exhibit 1.
4. Throughout the month of May 2006, the DPS Consumer Affairs Division received approximately 16 customer complaints about Verizon's alleged disclosure of customer records without legal authorization.
5. On May 24, 2006, the American Civil Liberties Union of Vermont (ACLU-VT), and seven Verizon Vermont customers filed a complaint with the Board seeking an

investigation into the possible disclosure of their telephone records to federal agencies, including the National Security Agency.

6. On May 26, 2006, Verizon submitted a written response to the DPS's May 17 inquiry. The response does not fully answer the questions posed by the DPS. A true copy of the response is attached as Exhibit 2.

7. Portions of Verizon's response are misleading and/or inaccurate. For example, Verizon offers local measured service in Vermont, which requires the carrier to track and bill for local calls. Nevertheless, in its response to the DPS's request for information, Verizon states that it does not make records of local calls "in most cases" because the "vast majority" of Verizon's customers do not pay for local calls.

8. Based on information in Verizon's response, it is apparent that Verizon does not maintain adequate records of information requests from state and federal agencies—whether by warrant, subpoena or otherwise—and fails to retain records of what, if anything, the company disclosed pursuant to those requests.

9. Verizon's failure to adequately respond to the § 206 request has hindered the DPS's ability to discharge its statutory duties.

10. Verizon is bound by state and federal laws forbidding it from disclosing customer records, absent legal authorization, to any third party for purposes other than connecting, tracking, and billing for telephone calls. Legal authorization includes express customer consent, a judicial warrant, a properly issued subpoena, or a valid national security letter.

WHEREFORE, the DPS respectfully requests that the Board:

a. open a proceeding to investigate the alleged disclosure of Vermonters' telephone calling records by Verizon Vermont;

b. consolidate this proceeding with Docket No. 7183;

c. impose penalties on Verizon for

    i. failing to adequately respond to the DPS's § 206 request and thereby obstructing the DPS's discharge of its duties; and

    ii. knowingly giving the DPS and the company's customers misleading and inaccurate information about this matter;

d. appoint a hearing officer to adjudicate discovery disputes that arise during the consolidated proceedings;

e. order any further relief the Board deems just and proper.

Dated at Montpelier, Vermont this 20th day of June 2006.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: ______________________________
Leslie A. Cadwell, Special Counsel

By: ______________________________
John Cotter, Special Counsel

cc: Attached service list

PSB Docket No. ___ - SERVICE LIST

Parties:

Leslie A. Cadwell, Esq.
John Cotter, Esq.
Vermont Department of Public Service
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Montpelier VT 05620-2601

Pamela Porell, Vice President-Vermont
Verizon New England, Inc. d/b/a Verizon Vermont
800 Hinesburg Road
South Burlington, VT 05403

Bruce P. Beausejour, Vice President & General Counsel
185 Franklin Street - 13th Floor
Boston, MA 02110

Interested Persons (Parties in Docket 7183):

Allen Gilbert, Executive Director
American Civil Liberties Union of Vermont
137 Elm Street
Montpelier, VT 05602

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SN

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STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE

May 17, 2006

Bruce P. Beausejour, Vice President and General Counsel
Verizon New England, Inc.
185 Franklin Street, 13th Floor
Boston, MA 02110

Pamela Porell, Vice President/Vermont
Verizon New England, Inc. d/b/a Verizon Vermont
800 Hinesburg Road
South Burlington, VT 05403

Re: Information request pursuant to 30 V.S.A. § 206

Dear Mr. Beausejour and Ms. Porell:

Pursuant to its statutory authority under 30 V.S.A. § 206, the Vermont Department of Public Service submits the following information requests to Verizon[1] and requests that the responses thereto be delivered to the Department's offices in Montpelier, Vermont, no later than the close of business on May 25, 2006.

1. Has Verizon disclosed or delivered to the National Security Agency ("NSA") the phone call records of any Verizon customers in Vermont at any time since January 1, 2001? If any such disclosures occurred prior to the date specified, please provide the date on which the disclosures commenced.

2. If the answer to the preceding question is yes, please identify the categories of information Verizon provided to the NSA, including the called and calling parties' numbers; date of call; time of call; length of call; name of called and calling parties; and the called and calling parties' addresses.

3. Has Verizon disclosed or delivered to any other state or federal agency the phone call records of any Verizon customer in Vermont since January 1, 2001? If any such

[1] As used herein, the term "Verizon" means Verizon Communications, Inc. and any and all affiliates, subsidiaries, operating companies or similar entities.

Exhibit 1
3 Pages

disclosures occurred prior to the date specified, please provide the date on which the disclosures commenced.

4. If the answer to the preceding question is yes, please identify the state and/or federal agency or agencies to which the information was provided or delivered, as well as the categories of information Verizon provided, including the called and calling parties' numbers; date of call; time of call; length of call; name of called and calling parties; and the called and calling parties' addresses.

5. Please describe the format in which the information was provided (e.g. database with information on a call-by-call basis).

6. Please describe the reporting interval for the provision of such information (e.g. monthly, annually etc.).

7. Please state how many of Verizon's Vermont customers have had their calling records disclosed or turned over to the NSA or any other governmental entity, on an agency-by-agency basis, since the inception of the disclosures? Please separate the total into business and residential customers.

8. State whether the disclosures of Verizon's Vermont customer call information to the NSA and/or any state or federal agency is ongoing.

9. State the number of occasions that Verizon has made such disclosures.

10. State whether the records that have been and are being disclosed contain:

    a. local calling area records;
    b. intrastate long distance records;
    c. interstate calling records;
    d. international calling records;
    e. calling plan records.

11. Is Verizon disclosing records for any communications services other than telephone calling records (e.g. records for e-mail or internet access)?

12. Please state whether any such disclosures were made by Verizon:

    a. voluntarily upon request of a governmental agency;
    b. in response to an exercise of governmental authority;
    c. If the response is "b" please describe the specific authority relied upon.

13. Does Verizon receive compensation for disclosing customer call information to third parties, including state and federal authorities? If yes, please state

    a. the terms of the compensation;
    b. the amount of compensation attributable to the company's Vermont operations;
    c. the Verizon entity receiving the compensation?

14. Has Verizon modified any of its equipment or other physical plant in Vermont to permit access to data and other information carried on its network by any agency of the federal government? If the answer is yes, please describe the location, equipment, and details of such modifications, and state the purpose for permitting such access.

15. State Verizon's policy for responding to state law enforcement requests for call records of its Vermont customers.

16. Please provide the information Verizon maintains relative to requests by state and federal law enforcement for call records of Verizon's Vermont customers; identify the location (street address, city, and state) where such records are kept and the name and title of their custodian; and the retention period for such records.

Your prompt and complete attention to these requests is appreciated. If you have any questions, please don't hesitate to call.

Sincerely,

David O'Brien,
Commissioner, Vermont Department of Public Service

cc: Honorable James Douglas, Governor
James Volz, Chairman, Vermont Public Service Board
William H. Sorrell, Vermont Attorney General

FILE COPY

verizon

cc: LC CC JC (SH)

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Vice President and Associate General Counsel

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2006 JUN 21 A 10: 54
VERMONT PUBLIC SERVICE BOARD

May 26, 2006

David O'Brien, Commissioner
Vermont Department of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601

Dear Commissioner O'Brien:

I am responding to your May 17, 2006, letter making various information requests on behalf of the Vermont Department of Public Service, which appear to be prompted at least in part by recent press coverage concerning Verizon's alleged cooperation with certain classified intelligence gathering activities by the National Security Agency ("NSA").

At the outset I want to reiterate that media reports have made claims concerning Verizon that are false. *See Verizon Issues Statement on NSA Media Coverage*, News Release (May 16, 2006) (attached hereto as Exhibit 1). In particular, Verizon has explained that it has not turned over data on local calls to the NSA and in fact does not even make records of such calls in most cases because the vast majority of customers are not billed on a per-call basis for local calls. *See id.* As Verizon has also made clear, to the extent it provides assistance to the government for national security or other purposes, it "will provide customer information to a government agency only where authorized by law for appropriately-defined and focused purposes." *See Verizon Issues Statement on NSA and Privacy Protection*, News Release (May 12, 2006) (attached hereto as Exhibit 2). Verizon "has a longstanding commitment to vigorously safeguard our customers' privacy," as reflected in, among other things, its publicly available privacy principles. *See id.*

I also wish to make clear that Verizon respects the Department's authority to propound information requests that relate to matters within its jurisdiction, and Verizon regards it as its obligation to respond to such requests within the bounds of the law. Verizon cannot, however, do so in this instance with respect to part of the information requested for the reasons explained below.

Exhibit 2
49 Pages

Verizon is prohibited from providing any information concerning its alleged cooperation with the NSA program. While the President and the Attorney General have acknowledged the existence of a counter-terrorism program aimed at al Qaeda involving the NSA,[1] they have made it plain that this program is highly classified, as are the identities of any cooperating parties and the nature of any such cooperation. As a result, as Verizon has already stated, it can neither confirm nor deny whether it has any relationship to the classified NSA program. It is a felony under federal criminal law for any person to divulge classified information "concerning the communication intelligence activities of the United States" to any person that has not been authorized by the President, or his lawful designee, to receive such information. *See* 18 U.S.C. § 798. Further, Congress has made clear that "nothing in this . . . *or any other law* . . . shall be construed to require disclosure of . . . any function of the National Security Agency, [or] of any information with respect to the activities thereof." 50 U.S.C. § 402 note (emphasis added). As the courts have explained, this provision reflects a "congressional judgment that, in order to preserve national security, information elucidating the subjects specified ought to be safe from forced exposure." *The Founding Church of Scientology of Washington, D.C., Inc. v. Nat'l Security Agency*, 610 F.2d 824, 828 (D.C. Cir. 1979). Similarly, if there were activities relating to the NSA program undertaken pursuant to the Foreign Intelligence Surveillance Act ("FISA"), that fact, as well as any records relating to such activities, must remain a secret under federal law. *See* 50 U.S.C. §§ 1805 (c)(2)(B) & (C). The same is true of activities that might be undertaken pursuant to the Wiretap Act. *See, e.g.*, 18 U.S.C. §2511(2)(a)(ii)(B).

The United States Government has made it clear that it will take steps to prohibit the disclosure of this information. For instance, the Department of Justice ("DOJ") has invoked the "state secrets" privilege in connection with a pending federal court action against AT&T concerning its alleged cooperation with the NSA.[2/] That well-established privilege permits the government to seek to bar disclosure of information that might otherwise be relevant to litigation where such disclosure would be harmful to national security. *See United States v. Reynolds*, 345 U.S. 1, 7-11 (1953). When properly invoked, the state-secrets privilege is an absolute bar to disclosure, and "no competing public or private interest can be advanced to compel disclosure. . . ." *Ellsberg v. Mitchell*, 709 F.2d 51, 57 (D.C. Cir. 1983). The court's analysis cannot include

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1/ *See, e.g.*, Department of Justice, Legal Authorities Supporting the Activities of the National Security Agency Described by the President (Jan. 19, 2006); Press Conference of President Bush (Dec. 19, 2005), available at http://www.whitehouse.gov/news/releases/2005/12/20051219-2.html; Press Briefing by Attorney General Alberto Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence (Dec. 19, 2005), available at http://www.whitehouse.gov/news/releases/2005/12/20051219-1.html.

2/ Numerous class action suits have recently been filed against Verizon in various federal and state courts concerning its alleged cooperation with the NSA program. Verizon expects that the DOJ will invoke the state secrets privilege in those cases as well.

any balancing of the respective needs of the parties for the information. *Kasza v. Browner*, 133 F. 3d 1159, 1166 (9th Cir.), *cert denied*, 525 U.S. 967 (1998); *Northrop Corp. v. McDonnell Douglas Corp.*, 751 F.2d 395, 399 (D.C. 1984). Further, if the subject matter of a litigation is a state secret, or the privilege precludes access to evidence necessary for the plaintiff to state a prima facie claim or for the defendant to establish a valid defense, then the court must dismiss the case altogether. *See, e.g., Zuckerbraun v. Gen. Dynamics Corp.*, 935 F.2d 544, 547-48 (2d Cir. 1991); *Halkin v. Helms*, 598 F.2d 1 (D.C. Cir. 1978); *Halkin v. Helms*, 690 F.2d 977 (D.C. Cir. 1982).

In the AT&T case, the Department of Justice has invoked the state secrets privilege and set forth its view that claims that AT&T violated the law through its alleged cooperation with the NSA program "cannot be litigated because adjudication of Plaintiffs' claims would put at risk the disclosure of privileged national security information." *See* Memorandum of the United States in Support of the Military and State Secrets Privilege and Motion to Dismiss or, in the Alternative, for Summary Judgment, filed on May 13, 2006, in *Hepting v. AT&T*, No. C-06-0672-VRW (N.D. Cal.) (attached hereto as Exhibit 3). A hearing on the DOJ's motion is now scheduled for June 23, 2006. The DOJ's rationale applies equally to Verizon's alleged cooperation with the NSA.

Finally, as noted above, Verizon has made it very clear that it cooperates with national security and law enforcement requests entirely within the bounds of the law. The assumptions in the popular press that the alleged assistance in connection with the NSA program violates the law are without any basis. None of the federal statutes governing the privacy of telecommunications and customer data forbids telecommunications providers from assisting the government under appropriate circumstances. The Wiretap Act, FISA, the Electronic Communications Privacy Act, and the Telecommunications Act all contain exceptions to the general prohibitions against disclosure and expressly authorize disclosure to or cooperation with the government in a variety of circumstances.[3/] Further, these laws provide that "no cause of action shall lie" against those providing assistance pursuant to these authorizations[4/] and also that "good faith reliance" on statutory authorizations, court orders, and other specified items constitutes "a complete defense against any civil or criminal action brought under this chapter or any other law."[5/]

[3/] *See, e.g.*, 18 U.S.C. §§ 2511(2), 2511(3), 2518(7), 2702(b), 2702(c), 2703, 2709; 50 U.S.C. §§ 1805(f), 1843. For example, 18 U.S.C. § 2709 requires a telephone company to disclose certain information if it receives a "national security letter." Similarly, Section 2511(2)(a) expressly authorizes companies to provide "information, facilities, or technical assistance" upon receipt of a specified certification "notwithstanding any other law."

[4/] *See, e.g.*, 18 U.S.C. §§ 2511(2)(a)(ii), 2703(e), § 3124(d)); 50 U.S.C. §§ 1805(i), 1842(f).

[5/] *See, e.g.*, 18 U.S.C. §§ 2520(d), 2707(e); § 3124(e).

As a result of the classified nature of the NSA program and the various prohibitions on disclosure imposed by federal law, Verizon cannot provide some of the information sought in the Department's requests. In particular, it cannot respond at all to requests 1 and 2 because they specifically seek information concerning Verizon's alleged cooperation with the NSA, which Verizon can neither confirm nor deny. As to the remaining requests, Verizon responds below to the extent it can consistent with federal law, but notes that its responses necessarily exclude any information concerning its cooperation, if any, with the NSA and any similar intelligence gathering activities.[6] Verizon's responses also exclude any information concerning other forms of government information demands the disclosure of which is barred by federal law.[7]

Request 3: Has Verizon disclosed or delivered to any other state or federal agency the phone call records of any Verizon customer in Vermont since January 1, 2001? If any such disclosures occurred prior to the date specified, please provide the date on which the disclosures commenced.

Response: Verizon discloses phone call records of Vermont customers to federal or state agencies[8] as authorized by law in response to subpoenas, warrants, court orders or emergency requests. Verizon and its predecessors have provided call records in response to such lawful demands and requests from government agencies over many years, and Verizon does not have information showing the date it first responded to such demands.

Request 4: If the answer to the preceding question is yes, please identify the state and/or federal agency or agencies to which the information was provided or delivered, as well as the categories of information Verizon provided, including the called and calling parties' numbers; date of call; time of call; length of call; name of called and calling parties; and the called and calling parties' addresses.

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6 Verizon notes that the Department lacks authority or jurisdiction with respect to matters relating to national security and federal statutes authorizing disclosures to federal agencies, and by submitting these responses Verizon is not suggesting that it has any such jurisdiction.

7 For example, Section 2511 of the Wiretap Act generally prohibits a carrier from disclosing even the "existence of any interception or surveillance" except in limited circumstances. Similarly, the Foreign Intelligence Surveillance Act requires that carriers maintain any records concerning surveillance under that Act under special security procedures that would prohibit disclosure. 50 U.S.C. § 1805(c)(2)(C).

8 Verizon's responses herein do not pertain to Verizon Wireless, which maintains its own systems, policies and records regarding subpoenas, warrants, court orders and emergency requests from government agencies seeking call records or other customer information.

Response: Verizon has established a centralized unit within our Verizon Legal Compliance group to accept and respond to federal and state agency subpoenas, warrants, court orders or emergency requests seeking call records or other customer information throughout our service area and has designed and implemented systems and policies to ensure timely, appropriate and lawful responses to such requests. Attached as Exhibit 4 is a listing of federal, state and local government agencies which, since January 1, 2002, have served such demands or requests for telephone numbers in Vermont.[9] Exhibit 4 also states the total number of such subpoenas, warrants, court orders and emergency requests received from those agencies during that period. Some words of explanation are in order. First, subpoenas, warrants and court orders for call records often seek data regarding multiple telephone numbers in multiple states. The agencies on the list are those that served such process seeking data with respect to at least one Vermont telephone number. Second, Verizon may not have provided data in response to each of the demands forming the basis of the list, for example where Verizon does not provide service for the number under investigation and thus did not have any responsive data. Third, Verizon's database extends to subpoenas served on or after January 1, 2002. Databases regarding earlier subpoenas are not searchable in a way that would allow Verizon to respond to this Request.

The categories of information provided in response to these subpoenas, warrants, orders and emergency requests vary depending on the type of data sought and the data that Verizon has available, and may include copies of the subscriber's phone bills; the subscriber's name, address, billing history, payment history and credit information; and data showing local and/or long distance calls made from or received at the subject number. Where individual call data is requested and available, it may include the date and time of the call, the number called, the rate, and/or the number of elapsed minutes, depending on the nature of the particular call.

Verizon does not generally maintain copies or records of the data it provides in response to subpoenas, warrants, court orders or emergency requests and thus cannot provide those responses to the Department, including the call data details sought in this Request. Moreover, to the extent that Verizon may have retained any such responses, Verizon is not free to divulge that information. Most government-issued subpoenas warn the recipient not to disclose the subpoena. Subpoenas issued by the Vermont District Court, for example, state that, "Please note that this is a confidential criminal investigation and may not be revealed pursuant to law." Likewise, subpoenas issued by the United States Customs Service state that, "You are requested not to disclose this subpoena for an indefinite period of time. Any such disclosure will impede this investigation and thereby interfere with the enforcement of Federal law."

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9 Exhibit 4 includes data regarding demands and requests directed to MCI as well as those to Verizon. Exhibit 4 captures only emergency requests made since June 1, 2004, when Verizon began tracking such requests, and may include emergency requests seeking a trap and trace, rather than call records.

Request 5: Please describe the format in which the information was provided (e.g. database with information on a call-by-call basis).

Response: Verizon may provide responses to subpoenas in hard copy or on diskette.

Request 6: Please describe the reporting interval for the provision of such information (e.g. monthly, annually etc.).

Response: Subpoenas, warrants, court orders and emergency requests generally specify a particular date for production and do not impose a recurring reporting interval.

Request 7: Please state how many of Verizon's Vermont customers have had their calling records disclosed or turned over to the NSA or any other governmental entity, on an agency-by-agency basis, since the inception of the disclosures? Please separate the total into business and residential customers.

Response: As noted above, Verizon has provided data in response to subpoenas, warrants, court orders and emergency requests from law enforcement authorities and other government agencies for many years. Verizon does not have records showing how many Verizon-serviced telephone numbers in Vermont (and by extension the number of Verizon Vermont customers) have been the subject of such government demands seeking call records over that period of time, or the number of such demands to which Verizon responded by providing call records.

Request 8: State whether the disclosures of Verizon's Vermont customer call information to the NSA and/or any state or federal agency is ongoing.

Response: As explained above, Verizon cannot and does not respond to this request with respect to the NSA or any other agency or program that is classified or for which a response is prohibited by federal law. With respect to a subpoena, warrant, court order or emergency request for call records, the disclosure in response is a one-time matter and is not "ongoing."

Request 9: State the number of occasions that Verizon has made such disclosures.

Response: *See* Verizon's responses to Requests 4 and 7 above.

Request 10: State whether the records that have been and are being disclosed contain:

a. local calling area records;
b. intrastate long distance records;

c. interstate calling records;
d. international calling records;
e. calling plan records

Response: Verizon's responses to subpoenas, warrants, court orders or emergency requests for call records or other customer information may include any or all of the categories of information specified in this Request, depending on the nature of the demand and the data Verizon has available.

Request 11: Is Verizon disclosing records for any communications services other than telephone calling records (e.g. records for e-mail or internet access)?

Response: Verizon responds to all lawful subpoenas, warrants, court orders or emergency requests, whether they seek records regarding telephone services or other services.

Request 12: Please state whether any such disclosures were made by Verizon:

a. voluntarily upon request of a governmental agency;
b. in response to an exercise of governmental authority;
c. If the response is "b" please describe the specific authority relied upon.

Response: Verizon's policy is to provide customer information (whether regarding telephone service or other services) only where authorized by law. As the data provided indicates, in 1,147 instances since January 1, 2002, those responses have been required by state or federal law or, in the case of responses to emergency requests, authorized by federal law.

Request 13: Does Verizon receive compensation for disclosing customer call information to third parties, including state and federal authorities? If yes, please state

a. the terms of the compensation;
b. the amount of compensation attributable to the company's Vermont operations;
c. the Verizon entity receiving the compensation?

Response: As explained above, Verizon cannot and does not respond to this request with respect to the NSA or any other agency or program that is classified or for which a response is prohibited by federal law.

Pursuant to federal statute, federal and state government agencies are in most instances required to reimburse Verizon for the reasonable costs incurred in searching for, assembling, reproducing and providing information lawfully requested and obtained by the agency. *See, e.g.*, 18 U.S.C. § 2706(a); 50 U.S.C. § 1805(c)(2)(D); *see also*, *Ameritech Corp. v. McCann*, 308 F.

Supp. 2nd 911 (E.D. WI, 2004). Because Verizon has centralized the function of responding to governmental subpoenas, its related costs and compensation are not readily attributable to the company's operations in any given state.

With respect to the terms of the compensation, Verizon charges $0.10 per page to copy customer phone bills or other records kept in the normal course of business. Where a subpoena, warrant, court order or emergency request seeks data that is not kept in the ordinary course of business and a special computer search is required, Verizon charges $150.00 per telephone number per day to reimburse it for the cost of performing the search. Verizon does not require payment of these charges before providing the requested information.

Request 14: Has Verizon modified any of its equipment or other physical plant in Vermont to permit access to data and other information carried on its network by any agency of the federal government? If the answer is yes, please describe the location, equipment, and details of such modifications, and state the purpose for permitting such access.

Response: For the reasons provided above, Verizon cannot respond to this question to the extent it relates to a confidential NSA program because it cannot confirm or deny any cooperation with any such NSA program. More generally, Verizon notes that the federal Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1002(a), requires carriers to make modifications to their hardware and/or software to provide certain capabilities in connection with law enforcement surveillance, and Verizon has made modifications to its network in compliance with that statute.

Request 15: State Verizon's policy for responding to state law enforcement requests for call records of its Vermont customers.

Response: *See* Verizon's responses above.

Request 16: Please provide the information Verizon maintains relative to requests by state and federal law enforcement for call records of Verizon's Vermont customers; identify the location (street address, city, and state) where such records are kept and the name and title of their custodian; and the retention period for such records.

Response: Verizon maintains electronic copies of subpoenas, warrants or court orders received from state and federal law enforcement authorities seeking customer call records. Verizon also maintains an electronic database that includes information regarding each subpoena or other demand received since January 1, 2002, including a tracking number assigned by Verizon, the name of the requesting agency, the date of receipt of the subpoena, the telephone number or numbers for which records are requested and the category of data sought. These records are kept on computer servers in various locations around the country. The custodian of those records regarding subpoenas from state or federal agencies in Vermont (other than subpoenas requesting a special computer search) can be reached by mail at:

Verizon
Custodian of Record
140 West Street, 21st Floor
New York, New York 10007

The custodian of records regarding subpoenas for which a special computer search is required can be reached at the following address:

Verizon
Custodian of Record
99 Shawan Road, Room 133
Cockeysville, Maryland 21030

Verizon's policy is to retain records of subpoenas, warrants, court orders and emergency requests for customer call records or account information for the current year plus the previous two years.

Please contact me if you would like to discuss further the matters addressed in this letter.

Sincerely,

Bruce P. Beausejour /PHZ

Bruce P. Beausejour

cc: Ms. Pamela Porell

EXHIBIT 1

News Release

Verizon Issues Statement on NSA Media Coverage

May 16, 2006

Media contact:
Peter Thonis, 212-395-2355

NEW YORK – *Verizon Communications Inc. (NYSE:VZ) today issued the following statement regarding news coverage about the NSA program which the President has acknowledged authorizing against al-Qaeda:*

As the President has made clear, the NSA program he acknowledged authorizing against al-Qaeda is highly-classified. Verizon cannot and will not comment on the program. Verizon cannot and will not confirm or deny whether it has any relationship to it.

That said, media reports made claims about Verizon that are simply false.

One of the most glaring and repeated falsehoods in the media reporting is the assertion that, in the aftermath of the 9/11 attacks, Verizon was approached by NSA and entered into an arrangement to provide the NSA with data from its customers' domestic calls.

This is false. From the time of the 9/11 attacks until just four months ago, Verizon had three major businesses – its wireline phone business, its wireless company and its directory publishing business. It also had its own Internet Service Provider and long-distance businesses. Contrary to the media reports, Verizon was not asked by NSA to provide, nor did Verizon provide, customer phone records from any of these businesses, or any call data from those records. None of these companies – wireless or wireline – provided customer records or call data.

Another error is the claim that data on local calls is being turned over to NSA and that simple "calls across town" are being "tracked." In fact, phone companies do not even make records of local calls in most cases because the vast majority of customers are not billed per call for local calls. In any event, the claim is just wrong. As stated above, Verizon's wireless and wireline companies did not provide to NSA customer records or call data, local or otherwise.

Again, Verizon cannot and will not confirm or deny whether it has any relationship to the classified NSA program. Verizon always stands ready, however, to help protect the country from terrorist attack. We owe this duty to our fellow citizens. We also have a duty, that we have always fulfilled, to protect the privacy of our customers. The two are not in conflict. When asked for help, we will always make sure that any assistance is authorized by law and that our customers' privacy is safeguarded.

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EXHIBIT 2

Already registere
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Please sign in.

e-mail

password

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News Release

Verizon Issues Statement on NSA and Privacy Protection

May 12, 2006

Media contact:
Peter Thonis, 212-395-2355

NEW YORK – *Verizon Communications Inc. (NYSE:VZ) today issued the following statement:*

The President has referred to an NSA program, which he authorized, directed against al-Qaeda. Because that program is highly classified, Verizon cannot comment on that program, nor can we confirm or deny whether we have had any relationship to it.

Having said that, there have been factual errors in press coverage about the way Verizon handles customer information in general. Verizon puts the interests of our customers first and has a longstanding commitment to vigorously safeguard our customers' privacy – a commitment we've highlighted in our privacy principles, which are available at www.verizon.com/privacy.

Verizon will provide customer information to a government agency only where authorized by law for appropriately-defined and focused purposes. When information is provided, Verizon seeks to ensure it is properly used for that purpose and is subject to appropriate safeguards against improper use. Verizon does not, and will not, provide any government agency unfettered access to our customer records or provide information to the government under circumstances that would allow a fishing expedition.

In January 2006, Verizon acquired MCI, and we are ensuring that Verizon's policies are implemented at that entity and that all its activities fully comply with law.

Verizon hopes that the Administration and the Congress can come together and agree on a process in an appropriate setting, and with safeguards for protecting classified information, to examine any issues that have been raised about the program. Verizon is fully prepared to participate in such a process.

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Attorneys for Intervenor Defendant United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS CAROLYN JEWEL, and ERIK KNUTZEN on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. AT&T CORP., AT&T INC., and DOES 1-20, inclusive, Defendants.	Case No. C 06-0672-VRW NOTICE OF MOTION AND MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT BY THE UNITED STATES OF AMERICA Judge: The Hon. Vaughn R. Walker Hearing Date: June 21, 2006 Courtroom: 6, 17th Floor

PLEASE TAKE NOTICE that, on June 21, 2006,[1] before the Honorable Vaughn R. Walker, intervenor United States of America will move for an order dismissing this action, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, or, in the alternative, for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure. As explained in the United States' unclassified memorandum as well as the memorandum submitted *ex parte* and *in camera*, the United States' invocation of the military and state secrets privilege and of specified statutory privileges requires dismissal of this action, or, in the alternative, summary judgment in favor of the United States.

Respectfully submitted,

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[1] The United States has filed an Administrative Motion to Set Hearing Date for the United States' Motions requesting that the Court set the hearing date for this motion and the United States' Motion To Intervene, for June 21, 2006 – the present hearing date for Plaintiffs' Motion for Preliminary Injunction.

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DATED: May 12, 2006

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL, and ERIK KNUTZEN, On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. AT&T CORP., AT&T INC., and DOES 1-20, inclusive, Defendants.	Case No. C-06-0672-VRW **MEMORANDUM OF THE UNITED STATES IN SUPPORT OF THE MILITARY AND STATE SECRETS PRIVILEGE AND MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT** Hon. Vaughn R. Walker

(U) INTRODUCTION

(U) The United States of America, through its undersigned counsel, hereby submits this Memorandum of Points and Authorities in support of the assertion of the military and state secrets privilege (commonly known as the "state secrets privilege")[1] by the Director of National Intelligence ("DNI"), and related statutory privilege assertions by the DNI and the Director of the National Security Agency ("DIRNSA").[2] Through these assertions of privilege, the United States seeks to protect certain intelligence activities, information, sources, and methods, implicated by the allegations in this case. The information to be protected is described herein, in a separate memorandum lodged for the Court's *in camera, ex parte* consideration, and in public and classified declarations submitted by the DNI and DIRNSA.[3] For the reasons set forth in those submissions, the disclosure of the information to which these privilege assertions apply would cause exceptionally grave harm to the national security of the United States.

(U) In addition, the United States has also moved to intervene in this action, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for the purpose of seeking dismissal of this action or, in the alternative, summary judgment. As set forth below, this case cannot be litigated because adjudication of Plaintiffs' claims would put at risk the disclosure of privileged national security information.

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[1] (U) The phrase "state secrets privilege" is often used in this memorandum to refer collectively to the military and state secrets privilege and the statutory privileges invoked in this case.

[2] (U) This submission is made pursuant to 28 U.S.C. § 517, as well as pursuant to the Federal Rules of Civil Procedure.

[3] (U) The classified declarations of John D. Negroponte, DNI, and Keith B. Alexander, DIRNSA, as well as the separately lodged memorandum for the Court's *in camera, ex parte* consideration, are currently stored in a proper secure location by the Department of Justice and are available for review by the Court upon request.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. _________

Petition of Vermont Department of Public	)
Service for an Investigation Into Alleged	)
Unlawful Customer Records Disclosure by	)
AT&T Communications of New England, Inc.	)

PETITION

NOW COMES the Department of Public Service (DPS), by and through its Director for Public Advocacy and the undersigned Special Counsel, and petitions the Public Service Board to open an investigation into the alleged unlawful customer records disclosure by AT&T Communications of New England, Inc. In support of its petition, the Department states as follows:

1. The DPS is responsible for supervising the execution of all laws relating to telephone and other utilities and is the statutory representative of the public before the Public Service Board. 30 V.S.A. § 2.
2. AT&T Communications of New England, Inc. is a company providing intrastate telecommunications service in Vermont and is subject to the jurisdiction of the DPS and the Board.
3. By letter dated May 17, 2006, and pursuant to the authority granted the DPS by 30 V.S.A. § 206, the DPS sought information from AT&T regarding the alleged disclosure of customer information to the National Security Agency and any other state or federal agency. A true copy of the request is attached as Exhibit 1.
4. On May 25, 2006, AT&T submitted a written response to the DPS's May 17 inquiry. The response does not even attempt to answer the specific questions posed by the DPS. A true copy of the response is attached as Exhibit 2.
5. AT&T's failure to provide responsive answers to the DPS's lawful § 206 request has obstructed the DPS's ability to discharge its statutory duties.

6. AT&T is bound by state and federal laws forbidding it from disclosing customer records, absent legal authorization, to any third party for purposes other than connecting, tracking, and billing for telephone calls. Legal authorization includes express customer consent, a judicial warrant, a properly issued subpoena, or a valid national security letter.

WHEREFORE, the DPS respectfully requests that the Board:

a. open a proceeding to investigate the alleged disclosure of Vermonters' telephone calling records by AT&T Communications of New England, Inc.;

b. impose penalties on AT&T for failing to adequately respond to the DPS's § 206 request and thereby obstructing the DPS's discharge of its duties;

c. order any further relief the Board deems just and proper.

Dated at Montpelier, Vermont this 20th day of June 2006.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: ______________________
Leslie A. Cadwell, Special Counsel

By: ______________________
John Cotter, Special Counsel

cc: Attached service list

PSB Docket No. - SERVICE LIST

Parties:

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STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE

May 17, 2006

Jay E. Gruber, Esq.
AT&T Communications of New England, Inc.
99 Bedford Street
Boston, MA 02111

Re: Information request pursuant to 30 V.S.A. § 206

Dear Mr. Gruber:

Pursuant to its statutory authority under 30 V.S.A. § 206, the Vermont Department of Public Service submits the following information requests to AT&T[1] and requests that the responses thereto be delivered to the Department's offices in Montpelier, Vermont, no later than the close of business on May 25, 2006.

1. Has AT&T disclosed or delivered to the National Security Agency ("NSA") the phone call records of any AT&T customers in Vermont at any time since January 1, 2001? If any such disclosures occurred prior to the date specified, please provide the date on which the disclosures commenced.

2. If the answer to the preceding question is yes, please identify the categories of information AT&T provided to the NSA, including the called and calling parties' numbers; date of call; time of call; length of call; name of called and calling parties; and the called and calling parties' addresses.

3. Has AT&T disclosed or delivered to any other state or federal agency the phone call records of any AT&T customer in Vermont since January 1, 2001? If any such disclosures occurred prior to the date specified, please provide the date on which the disclosures commenced.

4. If the answer to the preceding question is yes, please identify the state and/or federal agency or agencies to which the information was provided or delivered, as well as the

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[1] As used herein, the term "AT&T" means AT&T, Inc. and any and all affiliates, subsidiaries, operating companies or similar entities.

Exhibit 1
3 Pages

categories of information AT&T provided, including the called and calling parties' numbers; date of call; time of call; length of call; name of called and calling parties; and the called and calling parties' addresses.

5. Please describe the format in which the information was provided (e.g. database with information on a call-by-call basis).

6. Please describe the reporting interval for the provision of such information (e.g. monthly, annually etc.).

7. Please state how many AT&T Vermont customers have had their calling records disclosed or turned over to the NSA or any other governmental entity, on an agency-by-agency basis, since the inception of the disclosures? Please separate the total into business and residential customers.

8. State whether the disclosures of AT&T Vermont customer call information to the NSA and/or any state or federal agency is ongoing.

9. State the number of occasions that AT&T has made such disclosures.

10. State whether the records that have been and are being disclosed contain:

    a. local calling area records;
    b. intrastate long distance records;
    c. interstate calling records;
    d. international calling records;
    e. calling plan records.

11. Is AT&T disclosing records for any communications services other than telephone calling records (e.g. records for e-mail or internet access)?

12. Please state whether any such disclosures were made by AT&T:

    a. voluntarily upon request of a governmental agency;
    b. in response to an exercise of governmental authority;
    c. If the response is "b" please describe the specific authority relied upon.

13. Does AT&T receive compensation for disclosing customer call information to third parties, including state and federal authorities? If yes, please state

    a. the terms of the compensation;

b. the amount of compensation attributable to the company's Vermont operations;
c. the AT&T entity receiving the compensation?

14. Has AT&T modified any of its equipment or other physical plant in Vermont to permit access to data and other information carried on its network by any agency of the federal government? If the answer is yes, please describe the location, equipment, and details of such modifications, and state the purpose for permitting such access.

15. State AT&T's policy for responding to state law enforcement requests for call records of its Vermont customers.

16. Please provide the information AT&T maintains relative to requests by state and federal law enforcement for call records of AT&T's Vermont customers; identify the location (street address, city, and state) where such records are kept and the name and title of their custodian; and the retention period for such records.

Your prompt and complete attention to these requests is appreciated. If you have any questions, please don't hesitate to call.

Sincerely,

David O'Brien,
Commissioner, Vermont Department of Public Service

cc: Honorable James Douglas, Governor
James Volz, Chairman, Vermont Public Service Board
William H. Sorrell, Vermont Attorney General

DO
cc: JH

at&t

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cc: LC
CC
JC

May 25, 2006

David O'Brien, Commissioner
Vermont Department of Public Services
112 State Street, Drawer 20
Montpelier, VT 05620-2601

Re: Information request pursuant to 30 V.S.A. § 206

Dear Commissioner O'Brien:

This responds to your letter of May 17, 2006, in which you posed a number of questions arising from recent reports that AT&T and other telephone companies have provided information to the National Security Agency (NSA). While there has been much speculation in the news media, I want to make it clear that AT&T does not give customer information to law enforcement authorities or government agencies without legal authorization.

AT&T understands that it has an obligation to assist law enforcement and other government agencies responsible for protecting the public welfare, whether it be an individual or the security interests of the entire nation. At the same time, we prize the trust our customers place in us. If and when AT&T is asked by a governmental agency for assistance, we do so strictly within the law. Beyond that, AT&T cannot comment on matters of national security. Questions regarding such matters must be addressed on a national basis.

Very Truly Yours,

Jay E. Gruber

cc: Honorable James Douglas, Governor
James Volz, Chairman, Vermont Public Service Board
William Sorrell, Vermont Attorney General

JEG/ml

Exhibit 2
1 Page